



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER OF PATENTS AND TRADEMARKS  
Washington, D.C. 20231  
[www.uspto.gov](http://www.uspto.gov)

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/444,261	11/22/1999	DANIEL JACOFF		8417

25889            7590            10/07/2002

WILLIAM COLLARD  
COLLARD & ROE, P.C.  
1077 NORTHERN BOULEVARD  
ROSLYN, NY 11576

[REDACTED] EXAMINER

VERBITSKY, GAIL KAPLAN

[REDACTED] ART UNIT

[REDACTED] PAPER NUMBER

2859

DATE MAILED: 10/07/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

<b>Application No.</b> <b>09/444,261</b>	<b>Applicant(s)</b>	
	<b>Jakoff</b>	
<b>Examiner</b> <b>Gail Verbitsky</b>	<b>Art Unit</b> <b>2859</b>	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

1)  Responsive to communication(s) filed on Jul 5, 2002

2a)  This action is FINAL.      2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

### Disposition of Claims

4)  Claim(s) 1, 8-11, 13, 20-25, and 35-45 is/are pending in the application.

4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5)  Claim(s) 9-11, 13, 20-25, and 43-45 is/are allowed.

6)  Claim(s) 1, 8, and 35-42 is/are rejected.

7)  Claim(s) \_\_\_\_\_ is/are objected to.

8)  Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are a)  accepted or b)  objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)  The proposed drawing correction filed on Jul.05,2002 is: a)  approved b)  disapproved by the Examiner. If approved, corrected drawings are required in reply to this Office action.

12)  The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

13)  Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)  All b)  Some\* c)  None of:

1.  Certified copies of the priority documents have been received.

2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.

3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

14)  Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

a)  The translation of the foreign language provisional application has been received.

15)  Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

1)  Notice of References Cited (PTO-892)

4)  Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_

2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)

5)  Notice of Informal Patent Application (PTO-152)

3)  Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_

6)  Other: \_\_\_\_\_

Art Unit: 2859

## **DETAILED ACTION**

### ***Restriction/Election***

1. Applicant's election with traverse of the invention of Group I, claims 1-25 and 35-45, is acknowledged. Accordingly, claims 26-34, drawn to non-elected invention, are withdrawn from further consideration.

Applicant states that the search for the vial would require to search for the mold and for the level. This argument is not persuasive because, although it is true for many vials, not all vials are necessarily made by making a mold, and used in levels, as well as some levels do not require vials. Furthermore, the methods of molding are known to be used for a vast variety of structures other than vials. Thus, the search for the vial would not require to search the level and mold areas. Therefore, the restriction requirement stated in Paper # 3 is hereby repeated and thus made

**FINAL.**

### ***Specification***

2. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: keys being *integral* with the outer wall, as stated in claims 8, should be described in the specification.

Art Unit: 2859

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1, 8 and 35-42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Johansson (Sweden 148436) [hereinafter Johansson] in view of Johnson (U.S. 3750301) and Gruetzmacher et al. (U.S. 2002/ 0056203A1) [hereinafter Gruetzmacher].

Johansson discloses in Figs. 1-3 a device comprising a straight cylindrical outer wall, a curved inner cavity A having a substantially uniform arc in a cross section throughout its length, the arc having an apex 5, the apex is closer to the cylindrical outer wall than to the opposed wall G of the inner cavity. Johansson also discloses a cup B, opposed ends C spaced from the apex. At least one end of the cavity terminates in a wall D. Planes tangents to opposed spaced sides E and F meet at 90 degrees at the apex (Fig. 3). The planes tangent to the sides of the cavity are parallel to each other and at 90 degree angles to the plane tangent to the apex (Fig. 3). (The numerals A-G have been added by the Examiner, see attachment # 1 to the Office Action).

Johansson does not disclose an orienting means and the limitations of claims 8 and that the outer wall and the inner cavity of the vial are made simultaneously as stated in claims 35-42.

Johnson discloses a device in the field of applicant's endeavor comprising keys (orienting means) 14 extending from the outer wall in opposite direction along the length of the wall and

Art Unit: 2859

being adjacent to both ends. The keys are attached (integral) to the outer wall. Johnson also discloses side walls 4, 9 and A. The side walls 4 and 9 are substantially tangent to the outer wall of the vial, the side wall 6 is parallel to the plane B tangent to the apex of the cavity ( the numerals A-B have been added by the Examiner, see attachment # 2 to the Office action).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the device disclosed by Johansson, so as to add keys, as taught by Johnson, in order to provide a device with a good support on the surface and be able to align the device with horizontal.

Gruetzmacher discloses a level vial which is made by molding. Inherently, both, an outer wall and an inner cavity, are made simultaneously.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the device and its manufacturing disclosed by Johansson so as to make the vial by molding and thus, make simultaneously the outer wall and the inner cavity, as taught by Gruetzmacher, so as to minimize the time and costs of the manufacturing process.

With respect to claims 36-42: the method steps will be met during the normal manufacturing process of the device stated above.

***Allowable Subject Matter***

5. Claims 9-11, 13, 20-25 and 43-45 are allowed.

Art Unit: 2859

***Response to Arguments***

6. Applicant's arguments with respect to claims 1, 8, 35-42 have been considered but are moot in view of the new ground(s) of rejection.

A) Applicant states that Johansson (Swedish patent # 148436) does not show a vial having a closed wall with parallel inner and outer faces that are perpendicular to the outer cylindrical wall. This argument is not persuasive for the reasons stated in paragraph # 4 and the attachment to the Office action.

B) Applicant states that Johansson does not disclose an orienting means. This argument is moot in view of the new ground of rejection necessitated by the present amendment (see paragraph # 4 of the Office action).

C) Applicant states that the web of Johnson is different from the one claimed by applicant. This arguments are moot in view of the new ground of rejection necessitated by the present amendment.

D) Applicant states that the keys of Johnson are not integral with the side wall of the vial. This argument is not persuasive because it has been held that "integral" is sufficiently broad to embrace constructions united by such means as fastening and welding. *In re Hotte*, 177 USPQ 326 (CCPA 1973).

Art Unit: 2859

E) Applicant states that the prior art does not teach that an outer cylindrical wall and an inner cavity are made simultaneously. This arguments are moot in view of the new ground of rejection (see paragraph # 4 of the Office action).

F) Applicant states that the prior art does not teach that an outer cylindrical wall and an inner cavity are made in one step: the limitation on which the applicant relies is not stated in the claims. It is the claims that define the claimed invention, and it is claims, not specifications, that are anticipated or unpatentable. *Constant v. Advanced Micro-Devices, Inc.*, 7 USPQ2d 1064.

### ***Conclusion***

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The prior art cited in the PTO-892 and not mentioned above disclose related devices and methods.

8. Any inquiry concerning this communication should be directed to the Examiner Verbitsky whose telephone number is (703) 306-5473.

Any inquiry of general nature should be directed to the Group receptionist whose telephone number is (703) 308-0956.

GKV

September 30, 2002

Gail Verbitsky



*Patent Examiner, TC 2800*